

Adams J.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUN 27 2013

OFFICE OF
MANAGING DIRECTOR

Howard M. Weiss, Esquire
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209

Re: Waiver and Deferment Request (Financial
Hardship; 47 U.S.C. § 159(c)(1); 47 C.F.R. §§
1.1164, 1.1166(c) & (e))
Licensee/Applicant: Urban Radio Licenses, LLC
Station: N/A
Fees: Fiscal Year (FY) 2012 Regulatory Fee Late
Fees
Date Request Filed: Oct. 4, 2012
Date Regulatory Fees Paid: Unpaid
Fee Control No.: RROG-12-00014824

Dear Counsel:

This responds to Licensee's *Request*¹ for waiver and deferment of the unpaid Fiscal Year (FY) 2012 regulatory fees that were due September 13, 2012. For the reasons stated herein, we must dismiss and deny the *Request*.

Licensee asked us to waive payment of the FY 2012 regulatory fee and to defer payment during pendency of the *Request* on the grounds that it experienced a net loss for 2012, as supported by (1) a consolidated profit/loss and cash flow pertaining to Urban Radio Broadcasting, LLC, Licensee's operating affiliate, for the period January through August, 2012, and (2) a declaration from the vice president and chief operating officer.² The problems are that Licensee did not file its *Request* before becoming a delinquent debtor and Licensee did not support its *Request* with proper financial documentation. We discuss these matters in turn.

¹ Letter from Howard M. Weiss, Fletcher, Heald & Hildreth, 1300 North 17th St., 11th Fl., Arlington, VA 22209 to Federal Communications Commission, Office of the Managing Director, 445 12th St., S.W., Rm 1-A625, Washington, DC 20554 (Oct. 4, 2012) (*Request*).

² *Request*, Exhibits A and B.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,³ and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."⁴ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."⁵

Each year, the Commission establishes the final day on which payment may be made before it is late, *i.e.*, a deadline, after which the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164 will be imposed, and interest, penalties, and charges of collection will accrue under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2012, the deadline for paying regulatory fees was September 13, 2012.⁶ Licensee filed its *Request* on October 4, 2012, thus it was late. Moreover, Licensee did not pay the fee. Accordingly, as a matter of law, the penalty⁷ accrued. Thus, the regulatory fee, accrued late payment penalty, and the interest, penalties, and charges of collection⁸ are due. Accordingly, because Licensee is delinquent in paying the fee, under 47 C.F.R. §§ 1.1164 (e) - (f)(5) and 1.1910,⁹ we must dismiss its application. This ends the matter, and while we need not discuss the extent to which Licensee failed to properly document its petition to defer payment and its *Request* for a waiver,¹⁰ in this instance, we will explain Licensee's insufficiency, which is an alternative ground for dismissal and denial.¹¹

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.¹² The Commission has narrowly

³ 47 U.S.C. §159(a)(1); 47 C.F.R. § 1.1151.

⁴ 47 U.S.C. §159(c)(1); 47 C.F.R. § 1.1164.

⁵ 47 C.F.R. § 1.1164.

⁶ See FY 2012 Regulatory Fees due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012).

⁷ 47 U.S.C. § 159.

⁸ 31 U.S.C. § 3717.

⁹ 47 U.S.C. § 159(c)(2); 47 C.F.R. § 1.1164 (e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment."); § 1.1164 (f)(5) ("An application or filing by a regulatee that is delinquent in its debt to the Commission is also subject to dismissal under 47 CFR 1.1910.").

¹⁰ 47 C.F.R. 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.").

¹¹ 47 C.F.R. 1.1166(c).

¹² 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹³ In other words, fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely affect the licensee's ability to serve the public.¹⁴ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."¹⁵ In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.¹⁶ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.

Licensee has the burden¹⁷ of demonstrating that a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the Commission's regulatory action.¹⁸ Specifically, Licensee failed to meet our standard set forth at 47 C.F.R. § 1.1166 to demonstrate that on "a case-by-case" it has shown "good cause" and that the "waiver [of the required fee] would promote the public interest."¹⁹ In that regard, the *Request* does not present the required financial documentation to show directly that Licensee is experiencing financial hardship. First, Licensee submitted financial information pertaining to a different entity, Urban Radio Broadcasting, LLC,²⁰ and without disclosing the relationship of that entity to Licensee or the financial records of other affiliates or parents,²¹ and second the financial information is limited to a partial year's profit and loss and cash flow.²² This is insufficient.

¹³ 9 FCC Rcd at 5344, ¶ 29.

¹⁴ 10 FCC Rcd at 12761-62, ¶ 13.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*; *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971) ("burden is on the applicant seeking waiver of ... rules to plead specific facts and circumstances which would make the general rule inapplicable"); 47 C.F.R. § 1.1166. See *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner . . . has the 'burden of clarifying its position' before the agency."). See also 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

¹⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest."); *Tucson Radio, Inc. v. FCC*, *supra*; 47 C.F.R. § 1.3.

¹⁹ 47 C.F.R. § 1.1166.

²⁰ *Request*, Exhibit A.

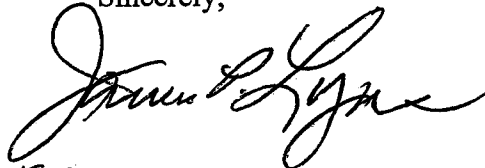
²¹ Compare FCC 323, Ownership Report for Commercial Broadcast Station File No. BOA 20111201LVC, dated 12/1/2011 with FCC 323, Ownership Report for Commercial Broadcast Station File No. BOS 20130314AAP, dated 3/12/2013.

²² *Request*, Exhibit A.

As we explained earlier, because Licensee is delinquent in paying its debt, under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940, charges continue to accrue until paid. Licensee should contact the Commission for a valid payoff amount. Furthermore, under 47 C.F.R. § 1.1910,²³ Licensee is subject to the Commission's red light rule, thus the Commission will withhold action on any application filed or pending, and as long as the debts are not paid, or other satisfactory arrangements are not made, any application filed or pending may be dismissed. *See* 47 C.F.R. §§ 1.1108, 1.1109, 1.1116, and 1.1118. Any Commission action taken prior to the payment of delinquent non-tax debt owed to the Commission is contingent and subject to rescission. Failure to make payment on any delinquent debt is subject to collection of the debt, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Improvement Act, 31 U.S.C. § 3717. Moreover, the Commission may collect amounts due by administrative offset.²⁴

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Stephens", written in a cursive style.

For: Mark Stephens
Chief Financial Officer

²³ 47 C.F.R. § 1.1910(b).

²⁴ 47 C.F.R. § 1.1912.